IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18172 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANUBHAI CHUNIBHAI PATEL

Versus

ANANDIBEN PATEL

Appearance:

1. Special Civil Application No. 18172 of 2003

PARTY-IN-PERSON for Petitioner No. 1

MR. KAMAL TRIVEDI, ADDL. A.G. WITH MS. MITA PANCHAL, AGP, for Respondent No. 1-3

RULE SERVED BY DS for Respondent No. 1,4

MS NEHA I JANI for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 25 / 6 /2004

C.A.V. JUDGEMENT

Shri Kanubhai Chunibhai Patel, in his capacity as a President of Gitanajli Trust, Talod, Dist. Sabarkantha, the petitioner has filed the present petition under Article 226/227 of the Constitution of India with the prayers for directing the respondent no. 2 Secretary, Education Department and the respondent no. 3 - Gujarat State and Director, Director, Technical Education, to issue No Objection Certificate (NOC) for starting a new Pharmacy College at Talod, District Sabarkantha, from the academic year beginning from June, 2004. The petitioner has further prayed for directing the respondents no.1 to 3 (i.e. the Hon'ble Minister of Education, Secretary to the Education Department and Director of Technical Education) to produce the entire record of the proceedings in this behalf right from the office of the Directorate of Technical Education to the office of the Hon'ble Education Minister and to examine the same in public interest and to call for the names and addresses of the institutions which have been granted No Objection Certificate (hereinafter referred to as "NOC" for short) for starting new Pharmacy College and to join them as parties to the proceeding and in the meantime to put in abeyance NOC already granted. The petitioner prayed for directing the Member-Secretary, All India Council for Technical Education (hereinafter referred to as AICTE), New Delhi, respondent no. 4 not to reject the application demanding permission to start the Pharmacy College from June 2004 only on the ground of there being a delay in grant of NOC till this Hon'ble Court decides the matter finally.

2. The relevant facts of the petitioner's case are as under :

2.1 Talod Kelavani Mandal was established in the year 1943 i.e. prior to independence, is imparting Education of Science from Primary to Secondary Level by obtaining grant of the Government. Students of various classes of Talod Taluka and Prantij Taluka in large numbers are availing benefits of this facility. But the educated class of this area had time and again made representation to the leaders of Talod Kelavani Mandal for establishing an independent institution which would not be under the restrictions/controls of the Government in the cities of Gujarat. They desired that specific type of education as per the present method can be imparted. In connection thereof, the Talod Kelavani Mandal had passed a resolution and had taken the decision to call for a seminar/meeting of the leaders of the voluntary institution and the education class. On the basis of

this decision of the Talod Kelavani Mandal, the doctors, advocates, engineers, professors and teachers linked with the profession of education and business of associations involved in various business, lions club, junior chambers and representatives of other voluntary institutions of the city was assembled. After convening in the said seminar, by taking a decision with an object to see that there is no interference or restriction of the Government in the method of education, self financed institutions will be formed. This also decided that through them technical institutions will be established so that training can be availed, right from K.G. to Primary, Secondary, Higher Education by the trainees and such activities can be done which would be useful to the society. In view of the aforesaid resolution, Gitanajali Trust was established on 10-6-1993. The said trust was registered as charitable trust. By the said trust, education for K.G. being commenced in the year 1993. This trust has progressed today in this arena and is imparting education by self financed method right from K.G. to Primary, Secondary (S.S.C.) Standard 10. As per the decision taken earlier, on the demand being made by the trust for sanction to run B.Ed. and P.T.C. college on independent basis, since two years. The trust is running Gitanjali College of Education (B.Ed.) and Gitanajali Primary Teachers Training (P.T.C.) college. Late Chunibhai Desaibhai Patel, the founder of the Talod Kelavani Mandal had established Arts, Commerce and Science college. These very leaders at the relevant time had taken interest in the progress of this educational institution and had developed it and today, under the management of late Chunibhai Desaibhai Patel Mahavidyalaya Mandal Science, Arts and Commerce College are getting grant of the Government and they are being run.

2.2 The petitioner submitted that entrance to Sabarkantha District is Talod. Talod being the head quarter for business, its reputation in the business and education areas in the State of Gujarat and other States are having a leading position. Talod being a head quarter, there are Government offices of various areas. In the field of industries, Talod is holding the industries of aluminium and raw material for the groundnut and cotton seed oil.

2.3 It is the case of the petitioner that in the College of Education - B.Ed. College since last two years 100 students are studying and in P.T. C. college number of students are taking education in other colleges. In view of the aforesaid circumstances, the

petitioner trust decided to open Pharmacy college at Talod and sent an application to the State of Gujarat for establishment of technical institution.

2.4 In view of the aforesaid professional and educational experience of the Trust, it was decided to start a Pharmacy College offering Decree Course from June, 2004 and on the basis thereof requisite application in the prescribed format along with prescribed fees of Rs.5000/- came to be sent to AICTE on 13-10-2003.

2.5 It is also the case of the petitioner that as per the requirement, copy of the aforesaid application was also endorsed to Department of Technical Education of the State of Gujarat at Gandhinagar seeking NOC as contemplated in Stage-III of Approval Process prescribed by AICTE in the notification advertised by AICTE on 11-9-2003. It may be noted that along with the said applications the petitioner enclosed all relevant annexures - 1 to 8 in support of their contention that they are able to start Pharmacy College at Talod for 2004-2005.

2.6 It may be noted that AICTE addressed a letter dated 30-10-2003 with a request to submit the documents no. 1 to 8 mentioned in the said letter in support of their application. The petitioner by his detailed letter dated 14-11-2003 addressed to the AICTE enclosing necessary documents as required by AICTE.

2.7 As per the requirement, copy of the aforesaid application was also endorsed to the Department of Technical Education of the State of Gujarat at Gandhinagar seeking NOC as contemplated in Stage-III of Approval Process prescribed by AICTE in the notification advertised on 11-9-2003.

2.8 It is further case of the petitioner that there were in all 19 (nineteen) applications including that of the petitioner's trust, which were received by the aforesaid Department seeking NOC for starting Pharmacy Colleges at various places in the State of Gujarat.

2.9 It is the case of the petitioner that along with other officers of the trust went to to the place and remained present before the Expert Committee on 28-11-2003 at about 12-00 O'clock. They were informed that hearing will commence at 2-00 O'clock. According to the petitioner, the Expert Committee stated about new requirements including the requirements and much more

fund i.e. Rs.20.00 lacs as FDR etc. and building and other equipment worth Rs.40.00 lacs. It was stated that if such requirement is fulfilled then and then the Pharmacy College can be started. It is also the case of the petitioner that the representatives of two or three institutions were heard. Thereafter, the Committee members including Shri Padhiyar and Shri Upadhyay and other officers left the Committee at about 3-00 O'clock The said officers asked the petitioner and other representatives to hand over their file to the concerned officer and the Committee will consider their applications and they will also consider their files and will pass appropriate orders accordingly. It is the case of the petitioner that there was no personal hearing or any participation in the hearing before Expert Committee. It is also the case of the petitioner that thereafter the petitioner received communicated dated 14-12-2003 wherein it is stated that the State Government has informed the petitioner that the case of the petitioner has not been recommended for grant of NOC for starting Pharmacy College at Talod. The reasons mentioned in the said letter are as follows :

"(a) The institution does not have experience of running professional education programme.

(b) Pharmacy Colleges are already existing nearby prominent areas viz. Himatnagar and Gandhinagar.

(c) Proposed institution is located at a remote place.

2.10 Being aggrieved with the said order, the petitioner has filed the present petition on various grounds. The party in person has remained present before this Court and made following submissions.

2.11 Before the party in person made submissions on the facts, he has invited my attention to the provisions of an AICTE Booklet from Legal Cell All India Council for Technical Education, New Delhi, dated 19.8.2002 and also regarding procedure followed by AICTE in connection with opening of the Pharmacy College.

2.12 An AICTE got published an advertisement / notification dated 10-9-2003/11.9.2003 in the leading newspapers laying down norms for consideration of application for establishment of new technical institutions in respect of undergraduate decree

programmes for Pharmacy, Engineering, Architecture, MBA and MCA, as per the national calender for the academic year 2004-05. The said advertisement also provided for various stages for the applicant institutions right from the beginning of Stage-I i.e. from submission of application duly filled in, including Stage-III inter-alia relating to issuance of No Objection Certificate (NOC) from the concerned State Government till the last Stage-X i.e. "issuance of letter of approval/rejection based on appeal", including stage-III;

2.13 It may be noted that the said advertisement provided further stages, Stage-IV for issuance of letter of intent, Stage-V - submission of appeal and its consideration by the Appellate Committee, Stage-VI issue of LOI based on appeal, Stage-VII - Expert Committee Visit, Stage-VIII issuance of letter of approval/rejection, Stage-IX consideration of appeal by the Appellate Committee.

2.14 AICTE had also fixed a calender for processing of applications for the establishment of new technical institutions for the year 2004-5 wherein last date for submission of application was 15-10-2003 and the last date for issue of NOC from the State Government was 15-12-2003.

2.15 Stage-III programme involved in the processing of applications consists of compliance of four requirements viz. (i) NOC from the concerned State Government to be received within the cut-off date i.e. by 15-12-203 by AICTE; (ii) placing of project proposal of applicant institutions during the period from 25-12-2003 to 5-1-2004 before a duly constituted Hearing Committee of AICTE and (iii) further consideration of the aforesaid project proposal of the applicant institutions by the respective Regional Committees of AICTE.

2.16 Clause (8) of the said AICTE Booklet of the Legal Cell provides for scrutiny of applications which reads thus:

> "On receipt of a copy of the application submitted to the Council for obtaining a Letter of Viability, the concerned University or the Directorate of Technical Education having jurisdiction in the area in which the new Technical Institution is to be started, shall make arrangements for scrutiny and verification of the information contained therein."

2.17 Clause 8.4(a) provides for requirement of land. Clause 8.4(b) provides for funds. Clause 8.4(c) provides for provisions as per "norms and standards". Clause (12) provides power to relax. He has also relied on Regulation for Admission and Fee Structure, Admission Regulations 1992, Admission and Fee Structure 1994 and also AICTE Guidelines for constitution of Governing Bodies of Self Financing Institutions.

PARTY IN PERSON HAS ASSAILED THE AFORESAID ORDER ON THE FOLLOWING GROUNDS:

RULE OF NATURAL JUSTICE:

3.1 It is the case of the petitioner that before deciding the application of the petitioner, the Expert Committee was going to hear the petitioner in connection with grant of NOC. It is the case of the petitioner that the Technical Committee has not heard and considered the application made by the petitioner in which the petitioner has referred the letter dated 30th October, 2003, wherein seven requirements were mentioned for which the petitioner has duly replied. This part of the reply of the petitioner has not been considered by the said Committee and the said Committee has not heard the petitioner. Refusal of NOC by the Expert Committee without hearing the petitioner , the principles of natural justice has been violated.

3.2 In support of the same, the petitioner relied upon the following authorities: Decision of the Hon'ble Supreme Court in the case of Mohd. Rashid Ahmad etc.V. The State of U.P. and another, reported in AIR 1979 SC 592, wherein it has been held as under :

> "Minister for Local Self Government before passing the impugned order of termination dated July 11, 1967 did not give to the appellant an opportunity of hearing. The order of termination of his services passed by the State Government, therefore, suffered from a serious legal infirmity."

3.3 Decision of this Court in the case of Gordhanbhai Ambalal Patel Vs. State of Gujarat, reported in 1991 (2) G.L.H. 144, wherein this Court has held as under :

> "Where there is no express provision for complying with the principles of natural justice that they are required to be followed, but even

in cases where there is exclusion of such principles by legislative process, the approach of the Court would be to consume the legislative provisions by importing the principles of natural justice rather than excluding those principles in which case such a provision may be held to be arbitrary and unconstitutional being violative of Article 14 of the Constitution."

ON MERITS OF THE MATTER:

3.4 It is the case of the petitioner that they have experience of running professional educational programme. It is also stated by the petitioner that they have experience of having Science and Arts colleges as well as P.T. College and number of students are studying in the said institution and therefore the contention of the respondents that the petitioner is having professional education experience is not borne out from the record of the case. What required is that the petitioner is a very good trust and it has experience of running Science, Arts and P.T. C. Colleges. The administration of the petitioner's trust is very neat and clean and scrutinised by the Charity Commissioner. The petitioner's trust pays salary to the staff by cheques. Thus, the petitioner has very ample experience of running educational institution and therefore the petitioner's trust can run Pharmacy College at Talod. It is also the case of the petitioner that originally in June, 2003, the trust was not given permission for starting P.T. College. Therefore, the petitioner trust filed Special Civil Application No. 40 of 2003 before this Court and in view of the judgment and order of the High Court the petitioner's trust was granted permission to start P.T.C. College. This fact shows that the petitioner's trust has valuable experience for running educational institutions.

3.5 Second contention raised is that even though Pharmacy College is given in Talod, there would not be any problem since Himatnagar and Gandhinagar are 40 kms. and 50 kms. respectively away from Talod and that there would not be any loss to the Government if any Pharmacy College is allowed to be started at Talod. It is submitted that large number of students are desirous of getting admission in Pharmacy College. At present there is no Pharmacy College at Talod. Therefore the same will be necessary. In all 15 (fifteen) Pharmacy Colleges are there where 825 seats are available and last boy who gets admission is having 77.3 percentage of marks and in that

case 1650 (one thousand six hundred fifty) students have to go out of State for getting admission in Pharmacy College. The petitioner has also demonstrated that there are 33000 (thirty three thousand) students in Science stream who get more than 50% of marks and they are entitled to get admission in Pharmacy college and there are 23972 students and out of those students have to get admission in medical, dental and physiotherapy. Thus, 18000 students who are entitled to get admission in Pharmacy college are not getting admission. In view of the above, the contention of the Government that there would be unhealthy competition is not right.

3.6 The petitioner has filed rejoinder affidavit wherein it is stated that the request for No Objection Certificate has been rejected and for that identical reasons have been given. There is non-application of mind by the authority concerned. It is the case of the petitioner that one of the reasons for rejecting the case of the petitioner is that Pharmacy Colleges are situated at Himatnagar and Gandhinagar.

3.7 It is the case of the petitioners that 14 applications were granted for opening pharmacy college. The petitioner submitted that in the case of A.R. College of Pharmacy, Vallabh Vidyanagar and Anand Pharmacy College, Anand though these Pharmacy Colleges were existing at Anand, two applications for opening Pharmacy Colleges have been granted. It is the case of the petitioner, as regards Faculty of Techno & Engineering, Vadodara and Prashant and Mital Kansara Pharmacy College, Pipaliya, three applications for opening Pharmacy Colleges at Limda, Bakrol and Ajwa of Baroda District were granted though there were existing two colleges at Baroda. Similarly, G.M. Bikhalia College of Pharmacy, Vapi and Maliba Pharmacy College, Tarsali of Surat, two applications for opening Pharmacy Colleges, Vidhyabharti Trust College of Pharmacy, Umark and C.F. Pitawala Institute of Pharmaceutical Science and Research, were granted. Similarly, in the case of S.K. Patel Pharmacy College, Mehsana and Shree Sarvajanik Pharmacy College, Mehsana, two pharmacy colleges situated at Mehsana, application for opening Tirupati Pharmacy College, Kansa has been granted. The party in person, therefore, submitted that the reasons given by the Government that they cannot give permission to open Pharmacy College at Talod, Sabarkantha because there are already existing Pharmacy Colleges at Himatnagar and Mehsana are fully unjustified and unwarranted.

3.8 Third reason given is that the Talod is situated at remote place. It is the case of the petitioner that this reason is not correct. It is also the case of the petitioner that Gujarat State Highway passes through Talod and the same is very well connected by railway and S.T. buses. Talod is the headquarter of Sabarkantha District and GIDC estate, Research Centre of Sardar Patel Agricultural University as well as Arts, Science and Commerce Colleges are located in Talod. This apart, Babasaheb Ambedkar Education Centre is also situated in Talod and the facility of latest hostel accommodating good number of student is also there in Talod. Therefore, it is stated that the reason given by the Government that Talod is situated at remote place is also not fairly right.

3.9 It is further stated that Agriculture Produce Market Committee situated in Talod and from Kheda and Ahmedabad Districts huge quantity of agriculture produce namely "Valiyari", "Jiru", "Makai" etc. are coming in the said AP Committee. In view of this, Talod is a prominent marketing place in Gujarat and therefore it is not correct on the part of the Government to say that Talod is in remote area.

3.10 It is the case of the petitioner that the petitioner's trust has been refused NOC only because of predetermined decision in that behalf by the Hon'ble Education Minister to petitioner's trust and therefore there is mala-fide intention on the part of the Hon'ble Education Minister in trying to see that NOC is not recommended to the petitioner's trust without any valid reason.

3.11 In support of the aforesaid contentions, the petitioner has relied upon the following decisions :

3.12(i). Decision of the Hon'ble Supreme Court in the case of The State of Mysore V. K. Manche Gowda, reported in AIR 1964 SC 506, wherein it has been held as under :

"Government servant shall be given a reasonable opportunity to know that fact and meet the same."

3.12(ii). Decision of the Hon'ble Supreme Court in the case of Mohd. Rashid Ahmad etc.V. The State of U.P. and another, reported in AIR 1979 SC 592, wherein it has been held as under :

"Minister for Local Self Government before passing the impugned order of termination dated July 11, 1967 did not give to the appellant an opportunity of hearing. The order of termination of his services passed by the State Government, therefore, suffered from a serious legal infirmity."

3.12(iii). The decision of the Hon'ble Supreme Court in the case of N.K. Singh Vs. Union of India and others, reported in 1994 (6) SCC 98, wherein it is observed as under :

"Allegations of mala fides having been made by the appellant on affidavit, it is difficult to fathom how the Tribunal rejected them without even requiring a counter-affidavit to rebut them. The Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal do not constitute the plea of mala fide, is obviously incorrect."

3.12(iv). Decision of this Court in the case of Gordhanbhai Ambalal Patel Vs. State of Gujarat, reported in 1991 (2) G.L.H. 144, wherein this Court has held as under :

"Where there is no express provision for complying with the principles of natural justice that they are required to be followed, but even in cases where there is exclusion of such principles by legislative process, the approach of the Court would be to consume the legislative provisions by importing the principles of natural justice rather than excluding those principles in which case such a provision may be held to be arbitrary and unconstitutional being violative of Article 14 of the Constitution."

CONTENTION ON BEHALF OF THE STATE GOVERNMENT:

4. On behalf of the respondent State Government, learned Additional Advocate General Shri Kamal B.Trivedi has appeared. He has relied on the affidavit filed by Shri G.B. Modha, Deputy Director, Technical Education Department, Gandhinagar on 27-1-2004 wherein several contentions have been raised by him.

4.1 Learned Additional Advocate General has relied upon the Regulations of All India Council For Technical Education, more particularly regulations for approval process, regulations for admission and fee structure and AICTE guidelines for constitution of governing bodies of self financial institutions. The petitioner has also relied on the same regulations. He has explained the salient features of All India Council for Technical Education and related matters in this behalf.

4.2 The various stages which provides detail procedure are as under:

i. Submission of application.

ii. Submission of documents at original office.

iii. Presentation of project proposal before Hearing Committee, which relates to issuance of No Objection Certificate.

iv. Issuance of letter of approval/rejection based on appeal.

4.3 It is pertinent to note that no place in the aforesaid advertisement/notification there is any provision requiring the State Government concerned to constitute any Committee i.e. Scrutinising Committee or Expert Committee or to grant an opportunity of oral hearing to any of the applicant institutions.

4.4 For ready reference, the second requirement relating to NOC from the concerned State Government as contained in Stage-III programme is set out hereunder:

:Stage-III

NOC FROM THE CONCERNED STATE GOVT/UT ADMINISTRATION (INTERIM NORMS : 2004-2005).

The State Govt./UT may issue the NOC mentioning RECOMMENDED or NOT RECOMMENDED within the cut off date. In case of NOT RECOMMENDED, the State Govt. is required to indicate the reasons for not recommending the proposals. The proposals NOT RECOMMENDED by the State Govt. shall not be processed by the Council. The NOC of State Government should be received within the cut-off

date. In case the State Govt. NOC is not received by the due cut off date, AICTE shall consider the application for further processing."

4.5 It is the case of the respondents that the Commissioner for Higher & Technical Education, Gujarat State, constituted a Scrutinising Committee on 11.11.2003 consisting of; (i) Dr. J.L. Juneja, Joint Director of Technical Education, (ii) Prof. N.V. Gunchala, Joint Director of Technical Education, (iii) Prof. R.H. Pandya, Joint Director of Technical Education, (iv) Dr. U.M. Upadhyay, Deputy Director of Technical Education and (v) Shri A.C. Dhaneshwar, Asstt. Placement & Training Officer and it was decided that the aforesaid Expert Committee shall examine and evaluate the proposals on the strength of the documents, information, the profiles of the proposed Society/Trust and other provisions for processing the proposal and give their opinion about the merits of the proposal for issuance of NOC.

4.6 It is the case of the respondents that the applicants including the petitioner were informed vide letter dated 19.11.2003 to personally remain present before the Committee on 28.11.2003 along with necessary documents and general discussion took place between the representative of the applicants including the petitioner Kanubhai Patel and the members had effectively participated in the said discussion. The Government directed all applicants to file written submissions. The petitioner filed the same. The Government did not consider the same.

4.7 It is the case of the respondents that after discussion with the representatives of the Institutions, on 10.12.2003 the respondents recommended NOC for 14 institutions including Mahila Pharmacy College, Rajkot Dist. The petitioner was not eligible for grant of NOC for starting new pharmacy college. It is the case of the respondents that the Expert Committee on 11.12.2003.

FURTHER CONTENTION OF LEARNED ADDITIONAL ADVOCATE GENERAL:

5. Relying upon the said regulations, it is submitted by the learned Additional Advocate General that NOC granted by the respective State Governments in favour of anybody desirous to start new institution, must reach the headquarter of AICTE at Delhi and Bhopal, by 15-12-2003 and AICTE will consider only such applications

where NOCs has been recommended by the State Government. He has also indicated that through the Commissioner of Higher Education has constituted the Committee by the letter dated 11-12-2003 consisting five persons for which I have already made a reference earlier in this judgment. He has also submitted that the said Committee of five persons has power to examine and evaluate the proposals on the strength of the documents, information, the profiles of the proposed Society/Trust and other provisions for processing the proposal and give their opinion about the merits of the proposal for issuance of NOC. In all there were 19 applications before the Commissioner of Higher Education for starting Pharmacy College in the State of Gujarat throughout and the Committee ultimately granted NOC in favour of 14 institutions by the letter dated 14-12-203. Learned Additional Advocate General has given details of 19 applications which were filed before the Government. The learned counsel has also relied upon the Annexures annexed with the said letter by which the Committee has refused to grant NOC to five institutions which is also annexed with the affidavit-in-reply.

5.1 Learned Additional Advocate General has further stated that before grant of NOC to 14 institutions, there were 4 in all Pharmacy Colleges in the State of Gujarat at several places in all 825 seats. While evaluating 19 applications received by the department, not only the individuals credentials of the respective applicants, including their reputation and self-sufficiency, were taken into account, but along therewith, various other aspects like actual requirement and distribution of the seats in the pharmacy education in the State, perspective plan of the State Government, were also taken into consideration. It was a result of the said exercise that NOCs came to be granted to 14 more colleges totalling to 840 new seats in the State, raising more than hundred percent in the present number of seats available in the existing Pharmacy Colleges. He has also submitted that the petitioner cannot claim NOC as a matter of right and so long as the Department has demonstrated the factum of petitioner's application for NOC having been duly considered, no interference in such academic matters is called for in a writ petition filed under Article 226 of the Constitution of India. Subjective satisfaction of the concerned authority as deducible from letter dated 14-12-2003 for not recommending NOC in case of the petitioner, cannot be assailed by way of such writ petition.

5.2 He has relied upon the judgment of the Hon'ble

Apex Court in the case of Dental Council of India Vs. Subharti K.K.B. Charitable Trust and Another with other allied matters, reported in 2001 (5) SCC 486, wherein it has been held as under :

5.2.1 "Page 495 - para 11 : Hence, it is to be reiterated that law as it stands, the Court's jurisdiction to interfere with the discretion exercised by such expert body is limited even though the right to education is concomitant to the fundamental rights enshrined in Part -III of the Constitution. It is equally true that unless there are proper educational facilities in the society, it would be difficult to meet with the requirements of the younger generation who have a keen desire to acquire knowledge and education to complete in the global market. It is required to be accepted that for establishing educational institutions, government machinery or funds are neither sufficient nor adequate and the necessity of private institutions cannot be denied. However, since ages our culture and civilization have recognised that education is one of the pious obligation of the society to be discharged by the "learned" and/or the State. It is for us to preserve that rich heritage of our culture of transcending (sic) the education continuously unpolluted. In the recent past, a notion has developed that it is a religious and charitable object to establish and administer an educational institution."

5.2.2 "Page 497 - para - 16 : There cannot be any dispute that normally the court should not interfere with the functioning of the educational institutions, particularly, expert bodies like MCI or DCI. Still however, the question is posed that if such bodies act arbitrarily for some ulterior purpose, whether the Court has the power to set right such arbitrary exercise of power by such authorities. We find the answer to this question in the affirmative. We also agree with the learned Solicitor General that educational institutions should not be permitted to be commercialised for earning money, but at the same time, the courts can do very little in this field as it is the function of the expert bodies, such as, the Medical Council of India or the Dental Council of India. However, citizens would lose faith in such institutions if the allegations made in this appeal are repeatedly made with

regard to inspection reports and granting of approval by the Central Government. We have this question for the Central Government to deal with appropriately as it is the function of the authorities concerned to plug the loopholes and see that that such matters nothing hanky panky happens."

5.3 Learned Additional Advocate General submitted that vide letter dated 19-11-2003 of the Director of Technical Education i.e. the respondent no. 3 herein, each of the applicants including the Trust of the petitioner was required to provide various details in respect of following points on 28-11-2003 :

a. Information relating to registration of the Trust/Society.

b. Registered deeds in respect of land.

c. Approval of building plan.

d. Land use certificate.

e. Latest financial position.

f. Proof in respect of the construction of the proposed institution on prominent place.

g. Information relating to justification and viability in support of proposal contained in DPR (Detailed Project Report)

5.4 Learned Additional Advocate General, therefore, submitted that process of recommendation of NOC was not dependent only on the aforesaid 7 points, but the same involves other aspects as referred to above like State Perspective Plan, need analysis, proper distribution of seats, reputation of the trust, location of new institute, other technical as well as professional programmes run by the trust. In fact, so far as the Trust of the petitioner is concerned, it was charged with an allegation that it was guilty of overcharging excess fees as was determined by the Monitoring Committee appointed by North Gujarat University pursuant to which a show cause notice was also issued whereafter, reportedly, the Trust had returned the excess amount. The charge of excess fees is proved against the petitioner.

5.5 The learned Additional Advocate General has

submitted that there is already a Pharmacy College at village Pipaliya and despite that fact NOC came to be recommended for another Pharmacy College in village Limda situated at a distance of 3 kms. away from village Pipaliya and another pharmacy college at Bakrol situated at a distance of 8 kms. away from Pipaliya and a third Pharmacy College in village Ajwa located at a distance of about 20 kms. away from village Pipaliya and that these villages are situated at a distance varying from 16 kms. to 20 kms. from Vadodara, where there is also one Pharmacy College already functioning. It is also contended by the learned Additional Advocate General that the said averments of the petitioner are factually incorrect inasmuch as the Pharmacy College at village Pipaliya is reportedly closed where the management has already relieved its staff and students are also transferred to other Pharmacy College as per the directions of this Hon'ble Court. Similarly, grant of NOC in respect of Pharmacy College at village Limda, it is to be noted that, the concerned applicant is already running a full-fledged Engineering College as well as Polytechnic Institute, whereas the third applicant at Bakrol is also running a full-fledged Polytechnic Institute. The concerned applicant is proposing to start a Pharmacy College at Ajwa has satisfied all the requirements and that is how NOC was granted. It is also important to note that the areas where the proposed Pharmacy Colleges were to start in the aforesaid three villages are not only easily assessable locations, but the said areas themselves are educational campus and the comparison of the petitioner's location at Talod with the areas of the said three villages is just not possible. The persons in the management of the concerned applicants proposing to start Pharmacy Colleges in the aforesaid three villages have good prudential at their disposal and almost all are academicians. In that view of the matter, there arises no question of any discrimination between the petitioner's trust on one hand and the applicants in above referred three cases on the other.

5.6 AICTE has prescribed a very detailed procedure providing in all 10 stages to be followed, one after another, within the time bound programme, while processing the applications of the applications for starting new institutions. There is no legislature provision which obliges the State/Department to grant oral hearing in a matter like this to the petitioner, more particularly when the whole exercise of arriving at decision is based on subjective satisfaction. For not recommending NOC in case of the petitioner is purely an administrative decision arrived at as a result of an

inquiry, which is neither judicial nor quasi-judicial in nature. Once the Government has considered the written representation of the petitioner, the rule of natural justice is followed. In support of the aforesaid proposition, the following authorities have been relied upon by the learned Additional Advocate General.

5.6.1 (a) In case of Madhya Pradesh Industries Ltd. Vs. Union of India, reported in AIR SC 671, the Hon'ble Supreme Court in paras 9 and 10 has observed as under :

5.6.2 "(10) As regards the second contention, I do not think that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effect opportunity of meeting any relevant allegations against him. Indeed, R.55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation."

5.6.3 (b) In case of Carborandum Universal Ltd. Vs. Central Board of Direct Taxes, reported in 1989 Supp (2) SCC 462 the Hon'ble Supreme Court in para 6 has observed as under :

"6 - .... We have already noticed that the power of the Board which was invoked was discretionary. It was to be exercised on the basis of the recommendations of the Commissioner and the material provided by the Assessee. Personal hearing in every situation is not necessary and there can be compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof.

5.6.4 (c) In case of Union of India Vs. M/s.

Jesus Sales Corporation, reported in AIR 1996 SC 1509, the Hon'ble Supreme Court in para 5 of the judgment has observed as under :

5.6.5 "5 - Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to represent his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved."

5.6.6 (d) In case of Gronsons Pharmaceuticals (P) Ltd. Vs. State of Uttar Pradesh, reported in AIR 2001 SC 3707 the Hon'ble Supreme Court in the matter of blacklisting, has observed in para 2 as under :

5.6.7 "2 - It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principles of audi alteram partem.... It was sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and he did reply to the show cause which was duly considered by the State Government. We

are, therefore, of the view that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice."

5.7 The learned Additional Advocate General further relied on the judgement of the Hon'ble Supreme Court in the case of UNION OF INDIA AND OTHERS VS. SHAH GOVERDHAN L. KABRA TEACHERS' COLLEGE reported in (2002) 8 SCC 228 in which on page 235 at para 11 the Hon'ble Supreme Court has observed thus:

"We are also of the further opinion that the derecognition of the BEd. (Vacation Course) cannot be nullified on the ground of failure to comply with the principles of natural justice. In the judgement under challenge, the High Court has held also that when the institution is imparting the BEd. (Vacation Course) then the National Council for Teacher Education could not have refused to recognise the said course. We are unable to accept this reasoning inasmuch as NCTE is an expert body created under the provisions of the National Council for Teacher Education Act, 1993 and Parliament has imposed upon such expert body the duty to maintain the standards of education, particularly, in relation to teachers' education. Education is the backbone of every democracy and any deterioration in the standard of teaching in the BEd Course would ultimately produce sub-standard prospective teachers who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends. Inasmuch as the teacher himself has received a sub-standard education it is difficult to expect from him a higher standard of teaching to the students of the schools or other institutions. It is from this perspective, the conclusion of an expert body should not be lightly tinkered with by a court of law without giving due weightage to the conclusion arrived at by such expert body."

5.8 As regards principles of natural justice, the learned counsel for the respondents submitted that in the matters relating to administration in absence of statutory rules providing for opportunity of oral hearing, the minimum requirement of law while passing such an order was to observe the principle of audi

alteram partem which is one of the facets of principles of natural justice. It is also well settled proposition of law that the principles of natural justice cannot be used as straight jacket formula. What is required to be seen is that before passing the order whether the authority has applied its mind judiciously on the record available before it.

5.9 The Hon'ble Supreme Court has time and again in various judgements has held that personal hearing in every situation is not necessary and there can be a compliance of the requirements of natural justice of hearing when a right to represent is given and the decision is made on a consideration thereof.

5.10 Learned Additional Advocate General stated that the petitioner has also raised contention on the ground of malafides against the Hon'ble Education Minister. He has stated that the Dy. Director, Technical Education, Gujarat State in para 10 of his affidavit-in-reply filed on behalf of the State Government has denied the said allegations. He has also specifically stated that the decision has been taken as per the merits of the case and the Hon'ble Education Minister does not have any malafide intention against the petitioner. Learned Additional Advocate General has further submitted that Hon'ble Minister Mrs. Anandiben Patel has also filed an affidavit-in-reply on 12th April, 2004 wherein all the allegations made by the petitioner in the present petition are denied by her. It is specifically by the Hon'ble Education Minister Mrs. Anandiben Patel that it is incorrect that the reasons mentioned for rejection of the No Objection Certificate (NOC) are contradictory to the standards laid down for grant of NOC. It is also denied by the Hon'ble Education Minister in her affidavit-in-reply that the assumption of the petitioner to the effect that she has taken the decision before the recommendation made by the Scrutinizing Committee for rejection of NOC for starting the Pharmacy College. It is also stated in the said affidavit-in-reply that the Scrutinising Committee after scrutinising the whole matter has taken a decision to the effect that the case of the petitioner is 'NOT RECOMMENDED" and the reasons for rejecting the NOC have already been explained in the affidavit-in-reply filed on 27-1-2004 on behalf of the respondents no. 1 and 2. The Hon'ble Education Minister has also denied the assumption of the petitioner that the decision is the result of vengeance and ill-intention with malafide motive on her part. Learned Additional Advocate General, therefore, submitted that in view of the aforesaid averments made by the Hon'ble Education

Minister Mrs. Anandiben Patel in her affidavit-in-reply, allegations of malafide cannot be agitated by the petitioner. Learned Additional Advocate General has further submitted that one of the reliefs claimed by the petitioner for the grant of permission to start a new Pharmacy College is not capable of being granted.

5.11 As regards allegations of mala fide, it may be appreciated that there is neither malice in fact nor malice in law in the present matter and for succeeding in such an allegation, there is a need for strong evidence and unimpeachable proof, which is not at all present in the instant case. (See: State of Maharashtra Vs. Dr. Budhikota Subbarao, reported in (1993) 3 SCC 71). The learned Additional Advocate General submitted that in view of the above submissions, the petition is required to be dismissed and the petitioner cannot claim any relief.

5.12 The learned Additional Advocate General submitted that in any view of the matter the relief prayed by the petitioner cannot be granted and he has relied on the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Era Educational Trust, reported in AIR 2000 SC 1573, wherein it has been observed by the Hon'ble Supreme Court, as under :

> "... It would have been appropriate for the High Court to have remitted the matter to the Medical Council of India or the Union of India for reconsideration, even if it was of the opinion that the order of the Medical Council of India deserved to be set aside and the Court ought not to have issued a writ of mandamus directing grant of permission. Any direction of the nature sought... would be in clear transgression of the provisions of the University Act and the regulations of the University. We cannot by our fiat direct the University to disobey the statute to which it owes its existence and the regulations made by the University itself."

5.13 In view of the aforesaid observations of the Hon'ble Supreme Court, this Court may not grant any relief to the petitioner. The cut-off date as prescribed by AICTE for the grant of NOC i.e. 15-12-2003 having already passed by, in any event it is not physically possible for the petitioner's trust to start a Pharmacy College with effect from the commencement of the academic year 2004-05. Majority of the stages subsequent to the

said cut-off date have also passed by and that therefore at the best, the petitioner's Trust can think of making a fresh application for the academic year 2005-06.

5.14 After making all the above submissions, learned Additional Advocate General has tried to deal with the authorities cited by the petitioner and has made following submissions :

5.14 (i) In case of State of Mysore Vs. K.Manche Gowda, reported in AIR 1964 SC 506, the question for consideration was whether previous record which was never made the subject matter of the charge against the delinquent employee can be taken into consideration while imposing punishment. It was in this context that it was held that since second show cause notice did not mention that the Government intended to take the previous punishments into consideration in proposing to dismiss him from service, the same deserves to be quashed and set aside since what is essential is that Government servants shall be given a reasonable opportunity."

5.15 It may be noted that principles involved in service jurisprudence cannot be made applicable in the matter of administrative inquiry involved in the present matter and that therefore the aforesaid judgment is not applicable to the instant case.

5.15 (ii) In case of Mohd. Rashid Ahmad Vs.State of U.P., reported in AIR 1979 SC 592, the Hon'ble Court while dealing with the termination of the services of the appellant, who was originally an employee absorbed provisionally from the erstwhile Corporation, and was not finally absorbed on the ground of his being unsuitable and further ordering termination of his services, without affording any opportunity of hearing, held the action as suffering from a serious legal infirmity and hence the same was in violation of the principles of natural justice."

5.16 The aforesaid judgment of the Hon'ble Court is also with reference to service law where

rights of the persons already in Government service were sought to be affected by retrospective amendment in the Rules and it was in that context that the question had arisen as to whether such persons are required to be heard or not. The principle enunciated in the said case cannot be made applicable to an administrative inquiry like the present one for finding out as to whether NOC deserves to be granted in the case or not.

5.17 (iii) "In case of N.K. Singh Vs. Union of India, reported in (1994) 6 SCC 98, the Hon'ble Supreme Court observed that allegations of mala-fide having been made on affidavit it is difficult to fathom why the Tribunal rejected them without even requiring the counter affidavit to rebut them."

This judgment does not apply to the facts of the present case since allegations of mala-fide have been denied by the concerned respondent No. 1 by filing counter affidavit.

5.18 After making above submissions, the learned Additional Advocate General submitted that the petitioner cannot insist for NOC from the State Government as of right. This apart, the petitioner cannot equate the administrative inquiry conducted while considering for grant of NOC at par with a judicial or quasi-judicial inquiry. What is required to be seen is as to whether there was an application of mind by the authority concerned before not recommending NOC in case of petitioner's trust and whether such an application of mind is prima-facie dissemble from the communication sent to the petitioner intimating that NOC is not recommended in its case. The petitioner cannot also equate the said matter with a departmental inquiry being conducted against a delinquent employee in the State Government who is served with a show cause notice for charge of misconduct wherein he is required to be given fullest opportunity of being heard.

5.19 The present one is a case where the State Government after having examined various aspects as mentioned hereinabove granted NOCs in certain cases which are not at all comparable with the case of the petitioner and it is not true that the reasons for which the petitioner has been denied the NOC for starting a new Pharmacy College at Talod do exist in other cases where

NOCs have been recommended. In fact those cases are more meritorious in various ways as mentioned hereinabove and the State Government has arrived at its subjective satisfaction after requisite inquiry/scrutiny by informal constitution of a Scrutiny Committee in the month of November 2003 though AICTE has not provided for constituting such a Committee and though order formally constituting the Committee came to be passed at a later stage in the month of December, 2003. It is once again reiterated that what is important to be seen is the calling for requisite details from the various applicants desirous of establishing new Pharmacy Colleges, examination of the said details by the officers of the State Government as well as considering various aspect mentioned hereinabove so as to find out as to which are deserving applications for grant of NOCs. Thus, there was total compliance as regards application of mind, fair treatment and observance of principles of natural justice without there being any favouritism and that the petitioner has no right to go into the sufficiency of the reasons for which his case has not been recommended for NOC.

CONCLUSION:

6. I have considered the case of the petitioner and the submissions made on behalf of the petitioner as well as the authorities relied upon by the petitioner. I have also considered the affidavit-in-reply filed on behalf of the respondents and the rejoinder-affidavit filed by the petitioner. I have also considered the submissions made by the learned Additional Advocate General on behalf of the Government. I have also gone through the AICTE Booklet of All India Council for Technical Education containing regulations for approval process, (ii) regulations for admission and fee structure and (iii) AICTE guidelines for constitution of governing bodies of self financial institutions.

6.1 In this case, two contentions have been raised by the petitioner. One is that the Government called the petitioner by their letter dated 19.11.2003 to remain present on 28.11.2003. At that time according to the petitioner, the petitioner remained present at 12 O'clock and thereafter it was announced that hearing will be at 2 O'clock. At 2 O'clock the Committee indicated in general the requirement of opening the technical course. The Committee heard two/three parties. However, thereafter, the Committee had to go for some urgent work. The Committee indicated that the remaining parties should file written submission and the Committee will consider

the same. That has been raised in para 3 on page 4 of the petition. As against that in the affidavit in reply it is the case of the Government that Government has constituted a Scrutiny Committee and the Scrutiny Committee has considered the representation of all the applicants including the petitioner and passed a reasoned order. The question before me is as to whether in view of this position the principles of natural justice are properly observed.

6.1A In this regard I rely on the judgement of the Hon'ble Supreme Court in the case of D.K. YADAV VS. J.M.A. INDUSTRIES LTD. reported in (1993) 3 SCC 259 in which at para 12 on page 269 the Hon'ble Supreme Court has observed as follows:

"Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article has a pervasive prcessual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable."

6.1B I further rely on the judgement of the Hon'ble Supreme Court in the case of CANARA BANK AND OTHERS VS. DEBASIS DAS AND OTHERS reported in (2003) 4 SCC 557 in which at paragraph nos. 13, 14 and 19 the Hon'ble Supreme Court has observed thus:

"Para 13 - Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a

common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

para 14 - The expressions "natural justice" and legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defence.

para 19 - Concept of natural justice has undergone a great deal of change in recent years. Rule of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life."

6.1C In this regard I may also refer the commentary of leading authors and their views on what is meant by principle of natural justice. I first rely upon the book of Mr. Justice C.K. Thakker on Administrative Law

Chapter 6 on page 158. On page 159 it is defined thus:

"Natural justice is an important concept in administrative law. It is not possible to define precisely and scientifically the expression "natural justice". The principles of natural justice or fundamental rules of procedure for administrative action are neither fixed nor prescribed in any code. They are better known than described and easier proclaimed than defined. (Per Lord Eversted in Abbot V. Sulivan (1952) 1 KB 189 (195). Natural justice has meant many things to many writers, lawyers and systems of law. It has many colours and shades and many forms and shapes. It is known as "substantial justice" (Sir Robert Collier in James V. R. (1877-78) 3 AC 614 (623)) PC; fundamental justice Lord Esher, M.R. in Hopkins V. Smehwick (1890) 24 QB 712 (716); "universal justice" (Per Lod Cranwarth in Drew V. Drew (1855) 2 Macq 1 (8)) or "fair play in action" (Per Harmon, L.J. in Ridge Vs. Baldwin (1963) 1 QB 539 (578);. According to de Smith (Judicial Review of Administrative Action, 1980, p. 157), the term "natural justice" expresses the close relationship between the common law and moral principles describing what is right and what is wrong, while in the words of Megary, J. (John Vs. Rees, (1969) 2 All ER 274; it is "justice that is simple and elementary, as distinct from justice that is complex sophisticated and technical". It is a great humanising principle intended to invest law with fairness to secure justice and to prevent miscarriage of justice. "Natural justice" has been used in a way which implies the existence of moral principles of self-evident and the unarguable truth. (Paul Jackson: Natural Justice, 2nd Edn., p. 1 cited in Swadeshi Cotton Mills Vs. Union of India (1981) 1 SCC 664 (683)). It is considered as "that part of natural law which relates to the administration of justice". Rules of natural justice are not embodied rules. Being means to an end and not an end in themselves, it is not possible to make an exhaustive catalogue of such rules."

6.2 I.P. Massey, on Administrative Law, (5th edition, 2001) Chapter 6, at page 161 "practice and procedure of administrative adjudication: Rules of Natural Justice", it is observed thus:

"Principles of Natural Justice -

Rules of Natural Justice have developed with the growth of civilization and the content thereof is often considered as a proper measure of the level of civilization and Rule of Law prevailing in the community. (K.I. Shephard Vs. Union of India, (1987) 4 SCC 431. In order to protect himself against the excesses of organized power man has always appealed to someone beyond his own creation. Such someone could only be God and His laws could only be divine law or natural law to which all temporal laws and actions must conform. This is the origin of the concept of natural justice. However, natural justice is not the justice of the nature where the lion devours the lamb and the tiger feeds upon the antelope. Natural justice is of the "higher law of nature" or "natural law" where the lion and lamb lie down together and the tiger frisks with the antelope. (Union of India Vs. Tulsiram Patel, (1985) (3 SCC 398). Thus natural justice implies fairness, reasonableness, equity and equality. Natural justice is a concept of common law and it is the common law world counterpart of the American "procedural due process". Natural justice represents higher procedural principles developed by judges which every administrative agency must follow in taking any decision adversely affecting the rights of a private individual".

6.3 Dr. S.P. Sathe on administrative law, 6th Edition, in Chapter 5 - fair hearing: Rules of Natural Justice - at pages 164-165 has observed as follows:

"The Committee on Ministers' Powers laid down the following essential norms of fair procedure:

1. No one shall be a judge in his own cause;
2. No one shall be condemned unheard; and
3. A party is entitled to know the reasons for the decisions.

If possible fourth principle which the Committee would have liked to be enforced was that the preliminary reports on which statutory enquiries are based should be made available to the parties. Two basic postulates of fair hearing are:

nemo judex in causa sua - which means that an

adjudicator be disinterested and unbiased and

that the parties be given adequate notice and opportunity to be heard (audi alteram partem). These two are the essential aspects of a quasi judicial decision.

The other two namely, that

the reasons should be given for the decision and
the people should have the right to information regarding on what basis the decisions are taken are applicable to all administrative actions including those involving the exercise of discretionary powers."

6.4 M.C. Jain Kagzi on The Indian Administrative Law, 6th Edition, 2002, on page 125 at para 3.5 observed thus:

"Administrative procedure: Rules of natural justice - The procedural fairness is the basic requirement in administrative action. The "fairness" or "fair procedure" in administrative action should be observed.

Again on page 136 at para 3.5.1 - it is further observed as follows:

"Hearing - audi alteram partem - The principle of audi alteram partem, which mandates that no one shall be condemned unheard, is an aspect of natural justice. Where there are no express words in the statute requiring an administrative authority to afford a hearing to a person, justice of the common law supplies the omission. The requirement of a hearing is an essential aspect of administrative procedure and quasi judicial proceedings."

6.5 Professor H.W.R. Wade on Administrative Law, 7th Edition (1994) Chapter 13 at page 463 has observed as under:

"Procedural justice - By developing the principles of natural justice the courts have devised a kind of code of fair administrative procedure. Just as they can control the substance of what public authorities do by means of the rules relating to reasonableness, improper

purposes and so forth, so through the principles of natural justice they can control the procedure by which they do it. It may seem less obvious that they are entitled to take this further step, thereby imposing a particular procedural technique on government departments and statutory authorities generally. Yet in doing so they have provided doctrines which are an essential part of any system of administrative justice. Natural justice plays much the same part in British law as does "due process of law" in the Constitution of the United States. In particular, it has a very wide general application in the numerous areas of discretionary administrative power. For however wide the powers of the state and however extensive the discretion they coner, it is always possible to require them to be exercised in a manner that is procedurally fair."

6.6 On page 494 at Chapter 15 learned author Professor Wade, in the same edition has further observed as follows:

"Audi Alteram Partem - Hear the other side -

It is fundamental to fair procedure that both sides should be heard: audi alteram partem, "hear the other side". This is the more far-reaching of the principles of natural justice, since it can embrace almost every question of fair procedure, or due process, and its implications can be worked out in great detail. It is also broad enough to include the rule against bias, since a fair hearing must be an unbiased hearing; but in deference to the traditional dichotomy, that rule has already been treated separately."

6.7 De Smith on Judicial Review of Administrative Action 5th Edition, 1995, at Chapter 8, on page 401 observed as follows:

"(para 8-001) - Procedural fairness, as we have seen, is no longer restricted by distinctions between "judicial" and "administrative" functions or between "rights" and "privileges". This "heresy was scotched" in Ridge V. Baldwin (1964) A.C. 40. The term "natural justice" is being increasingly replaced by a general duty to act fairly, which is a key element of procedural propriety. (In O'Reilly Vs. Mackman (1983) 2

A.C. 237.

(para 8-002) Whichever term is used, the time has come to make a break with the artificial constraints surrounding the situations in which natural justice or the duty to act fairly required. The previous distinctions were already comatose and should be formally declared moribund. The entitlement to fair procedures no longer depends upon the adjudicative analogy, nor whether the authority is required or empowered to decide matters analogous to lites inter partes. The law has moved on; not to the state where the entitlement to procedural protection can be extracted with certainty from a computer, but to where the courts are able to insist upon some degree of participation in reaching most official decisions by those whom the decisions will affect in widely different situations, subject only to well established exceptions."

6.8 Again on page 415 (para 8.032) it is further observed thus:

"In the previous edition of this work it was contended that the decision of a minister to close a coal pit would, because government economic policy was involved, not attract the duty to act fairly.(de Smith 4th ed., 1979, p. 180). In a recent case, however, it has been held that just such a decision was void for failure to consult the unions and others who had a legitimate expectation of being consulted prior to the pit closures (R.V. British Coal Corporation and Secretary of State for Trade and Industry, exp. Vardy (1993) I.C.R. 720, D.C. Nevertheless, decision such as these, and others categorised as "legislative", have remained relatively immune from the assault that has been made upon the distinction between duties that are analytically "judicial" and those that are "purely administrative". English courts have been reluctant to impose the duty to consult on ministers exercising powers delegated under legislation to issue orders or directions. (See, e.g. Bates Vs. Lord Hailsham of Marylebone (1972) 1 W.L.R. 1373. Nor is such a duty imposed upon the procedures for making policy of a less formal kind, although where consultation is required by statute the courts will policy its implementation and insist that it is adequate and

genuine. By contrast, in the United States full opportunity for notice and comment for most administrative rule making is provided by statute."

6.9 Again on page 486 (para 10.016) it is further observed as under:

"We have seen that in the past the duty to act fairly did not normally apply to decisions containing a substantial "policy" content or regarded as essentially "allocative". In other jurisdiction, even after the demise of the old distinction between "judicial" and "administrative" decisions, the category of "legislative" decision has tended to survive. As we have contended however, "policy" or "legislative" decisions should not ipso facto be excused from the duty to act fairly. Indeed, in a number of cases that duty has been imposed in a policy setting, although in others the content of the fair hearing may be relaxed."

6.10 Halsbury's Laws of England, Fourth Edition, 1973, Vol. 1, on Administrative Law, on page 90 at para 74 it is observed thus:

"Audi alteram partem - The rule that no man shall be condemned unless he has been given prior notice of the allegations against him and a fair opportunity to be heard is a cardinal principle of justice. This rule has been refined and adapted to govern the proceedings of bodies other than judicial tribunals; and a duty to act judicially in conformity with the rule has been imposed by the common law on administrative bodies not required by statute or contract to conduct themselves in a manner analogous to a court. Moreover, even in the absence of any charge, the severity of the impact of a discretionary decision on the interests of an individual may suffice in itself to attract an implied duty to comply with this rule."

6.11 I have considered the submissions made by the petitioner. I have also considered the affidavit in reply filed by the Government as well as the submissions made by the learned Additional Advocate General. I have also considered the principles of natural justice which I have extracted from various text books as well as various

judgements of the Hon'ble Supreme Court which have been referred above. It is a specific case of the petitioner that the Director of Technical Education addressed a letter dated 19.11.2003 and informed the petitioner as well as other applicants to remain present on 28.11.2003 in connection with hearing of No Objection Certificate to be granted by the Government. The Expert Committee also remained present on the same day and hearing was to commence at 12 O'clock and ultimately hearing started at 2 O'clock. It is the case of the petitioner that one officer Mr. Padhiar has indicated necessity to open technical course and also indicated various requirements for opening of the technical education. At that time the petitioner indicated that all these requirements are at the stage of AICTE Rules and as and when that stage will come the petitioner will follow the same. At that time the Expert Committee heard the representatives of two/three applicants and thereafter as the Members/Officer of the Committee have to go to attend certain meeting, Members Shri Padhiar and Shri Upadhyaya as well as other Officer left the place and other applicants who have not been heard met in the hall at 3 O'clock and after half an hour, a clerk informed that Members of the Expert Committee are not going to come and all applicants will have to handover the file and the Expert Committee will consider the same. This is the sum and substance in connection with the procedure envisaged by the Expert Committee.

6.12 The respondents have filed affidavit of one G.B. Modha, Deputy Director, Technical Education, dated 27.1.2004. It is the case of the Government that the Government has considered the applications filed by all the applicants and thereafter granted No Objection Certificate to 14 institutions and rejected the applications of other institutions including the petitioner. It is the case of the Government that all the applicants including the petitioner trust were informed about their meeting on 28.11.2003 at 12.30 hours general discussion took place between the representatives of all the institutions including the petitioner and the Members of the Committee and that all the representatives of the institutions had effectively participated in the said discussion. The Expert Committee on 11.12.2003 sent its recommendation for grant of NOC of the respective institutions for approval and signature to the Secretary, Higher & Technical Education. Thereafter, on 14.12.2003 the Secretary returned the same duly approved to the Directorate of Technical Education, Gujarat State for submission thereof to the AICTE and also for conveying the decision taken to the respective institutions. It is

the case of the respondents that Government by its communication dated 14.12.2003 gave reasons. The said communication is by Director of Technical Education. However, the said communications did not mention that they have obtained the opinion of the Expert Committee and Expert Committee has given the reasons.

6.13 In this case the Government has heard two/three applicants and thereafter the Expert Committee has left the place and then considered the representation of other people. So there is a deviation as regards principle of natural justice in case of two/three and other applicants and the case of the petitioner. In this situation, merely considering written representation may not amount to following rule of natural justice in facts and circumstances of the case. Though the Government constituted Expert Committee, from the record it is not clear as to whether the Expert Committee has heard the petitioner or whether the Expert Committee has applied its mind and given reasons or not. In view of the same, I am of the view that rule of natural justice has been violated. In view of the peculiar facts and circumstances the decision given by the Director, Technical Education Committee dated 14.12.2003 is quashed and set aside being violative of principle of natural justice.

6.14 Without expressing opinion and without going into the merits of the matter as regard academic year 2004-05 time table which has been mentioned by AICTE at page 26 to the memo of the petition shows calender for processing of applications for establishment of new technical institutions for the yea 2004-05. It provides the date of advertisement, date of submission of the application, date of verification of documents, last date for issue of NOC from State Government which was 15th December, 2003. Thereafter, hearing committee, regional committee, issuance of letter of intent/registration, appeal against the decision of the council, consideration of the appeal by the appellate committee, issuance of letter of intent for rejection against appeal, creation of joint FDR and submission of documents as per LOI at regional office, visit of the expert committee. All these stages were over on 30th April, 2004. Today, we are in June, 2004. Entire process and time is already over. Therefore, it is not possible for this Court to grant any relief to the petitioner for starting new Pharmacy College for the academic year 2004-05. Therefore, it is physically impossible for this Court to grant any relief to the petitioner at this stage for academic year 2004-2005. The Hon'ble Supreme Court has observed that in education

matter schedule for academic starting has to be seen and whatever time table fixed and there shall not be deviation in time table and therefore due to paucity of time it is not possible for this Court to grant any relief to the petitioner for year commencing 2004-2005. So due to paucity of time for year 2004-2005 this Court may not be able to give any direction to the petitioner regarding commencement of academic year 2004-2005.

6.15 In view of the same, for the year 2005-2006 the following directions can be given. It will be open for the petitioner to file detailed application before the Government raising all these contentions and I am of the view that the Expert Committee constituted by the Government consisting five expert members, will consider the application along with the provisions of AICTE and they may scrutinize all the documents, statements etc. submitted by the petitioner and if they need they may call for and hear the petitioner and they shall give their opinion in writing in this regard. After receipt of such opinion of the Expert Committee by the State Government, Commissioner of Higher Technical Education, may consider the case of the petitioner and thereafter shall pass appropriate order in accordance with law giving detailed reasons for accepting or rejecting the NOC to the petitioner. It may also be noted that the concerned authority of the State Government will consider the explanation given by the petitioner in this petition as well as in the written statement against the objections raised by the Government in this behalf and the authority/committee concerned will consider all the explanations given by the petitioner and shall give opinion in this regard.

6.16 The authority has given three reasons for rejecting N.O.C. to the petitioner. The petitioner has tried to demonstrate that all the three reasons given are not genuine to the question involved in this behalf. According to the petitioner the authority has not applied its mind . On the other hand in the affidavit in reply and the arguments, the State Government has tried to demonstrate that the State Government has applied its mind and considered various aspects in this behalf and tried to submit that the Expert Committee has considered all these points and given cogent and convincing reasons for rejecting N.O.C. to the petitioner. As I am holding that there is violation of principle of natural justice and directing the authority to hear the petitioner again, I do not consider the legality and validity of the reasons given by the authority. As I am remanding the matter to the authority, the authority will consider the

reasons given by the Expert Committee and the explanation given by the petitioner.

6.17 This Court has not expressed any opinion on the merits of the matter as to whether the reasons given by the Government are genuine, bonafide or legitimate. This Court is remanding the matter to the authority and the authority will consider the matter afresh and pass a short but reasoned order.

6.18 The petitioner has raised mala fide against Minister. The Government ha filed affidavit and the Hon'ble Minister has denied mala fide. This Court is of the view that the contention of mala fides has no basis and the same is rejected.

6.19 In view of the foregoing reasons, this petition is dismissed. Rule is discharged, with no order as to costs.

Before parting, I quote the following from the book "You Can Win" by Shiv Khera, on page 19 thus:

"Intellectual education influences the head and values-based education influences the heart. In fact, edcuation that does not train the heart can be dangerous. If we want to build character in our offices, homes and society, we must achieve a minimum level of moral and ethical literacy. Education that builds fundamental traits of character - such as honesty, compassion, courage, persistence and responsibility - is absolutely essential. We don't need more academic education; we need more values education. I would stress that a person who is morally educated will be a lot better equipped to move up in life or succeed than a morally bankrupt person with excellent academic qualifications. Character building and teaching values and ethics come in the formative years because a child is not born with this knowledge."

(K.M.Mehta, J.)

/JVSatwara/pkn